IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2487 OF 2006

Shri.Rajesh Lalji Singh .. Petitioner
V/s
Shri.A.N.Roy & Ors. .. Respondents

Mr.U.N.Tripathi for the Petitioner.
Mr.A.R.Patil, APP for Respondents.

CORAM : DR.S.RADHAKRISHNAN, & SMT.R.S.DALVI, JJ.

DATE : 5th September, 2007.

P.C.:

1. By this petition, the petitioner is challenging the Detention Order dated 7.9.2006 passed by the Commissioner of Police, Brihanmumbai under the provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of the public order.

2. Mr.Tripathi, the learned Counsel for the detenu has pointed out that there are two serious variances with regard to the grounds of detention and the material based on which the said Detention Order was passed by the Detaining Authority. In view thereof, the learned Counsel for the Petitioner has submitted that the said detetnion order ought to be set aside.

3. Mr.Tripathi the learned Counsel for the Petitioner pointed out that in the grounds of detention

it is mentioned that the incident had taken place during the last week of July, 2006 whereas, the statement of Witness 'A' categorically states that the incident had taken place during the first week of July, 2006 and not in the last week of July, 2006. Secondly, the learned Counsel for the Petitioner has also pointed out that in the grounds of detention it is mentioned that the detenu's associate Rakesh Singh had broken the glass vase by beating the hammer on it, whereas, witness 'B' in his statement has clearly stated that Rakesh Singh had merely thrown the said glass vase down and broken the same. Mr.Tripathi, the learned Counsel for the detenu has further submitted that the detention order indicates very serious act of terrorising. On the contrary, the statement of witness 'B' indicate that the Rakesh Singh had merely thrown the glass vase down and the same had broken. Mr.Tripathi, the learned Counsel for the detenu has also contended that though both these variances have not been raised in the Petition and pleaded, in the Habeas Corpus Petition strict pleadings do not apply, and if the same are justifiable from the grounds and other material the same can be entertained by the Court. In that behalf the learned Counsel for the detenu referred to and relied upon the judgment of this Court in the case of **Mrs.Fehmida Iqbal Shaikh Vs. The State of Maharashtra, 2000 ALL MR (Cri) 1099**, wherein, paragraph No.6 of the said judgment reads as under :-

It is well settled that in a Habeas Corpus Petition, the law of strict pleadings does not apply and if the material necessary for the determination of a ground is available on record, a ground though not pleaded can be considered by the court. In this connection, it would be appropriate to refer two decisions of the Hon'ble Supreme Court viz. those reported in **AIR 1981 Supreme Court 1126 (Harish Pahava Vs. State of U.P. & Ors.) and AIR 1980 Supreme Court 1983 (Smt.Icchu Devi Choraria Vs. Union of India & Ors.)**

A perusal of para 2 of the former decision would show that it was urged before the Supreme Court that since before the hgih Court, it was not pleaded that the detenu's representation to the State Government was not decided within a reasonable time and hence the delay was fatal to the detention, the detenu could not canvass this point. A perusal of para 2 would also show that the Supreme Court repelled the said objection observing as under:

"This point was no doubt not taken before the High Court, but in view of its importance and the fact that all the material necessary for its determination is available on record, we have allowed it to be raised before us and have overruled a preliminary objection tkaen by the State to the effect that it should not be entertained."

In the later decision in para 4, the Supreme Court observed thus:

"It is also necessary to point out that in case of an application for a writ of habeas corpus, the practice evolved by this court is not to follow strict rules of pleading nor place undue emphasis on the question as to on whom the burden of proof lies."

4. Mr.Mhaispurkar, the learned APP has contended that the aforesaid grounds were not raised in this Petition and the same have not been dealt with in the reply. However, he could not controvert both the aforesaid two variances from the record.

5. The learned Counsel for the Petitioner has submitted that the aforesaid two serious variances on the part of

the Detaining Authority indicate total non application of mind. Over and above, the learned Counsel has further submitted that, in view of such variances the detenu's right to make an effective representation under Article 22(5) of the Constitution of India also stands deprived.

6. We have perused the grounds of detention. It is explicitly clear that the aforesaid two variances are found, and if that be so, it is clear case of non-application of mind on the part of the Detaining Authority. It is clear that the Detaining Authority had not applied its mind to the material produced before it and while formulating the grounds of detention.

7. Under the aforesaid facts and circumstances, we are inclined to quash and set aside the impugned order of detention dated 7.9.2006. Accordingly, the Rule is made absolute in terms of prayer clause (c), and the detenu is directed to be released forthwith, if he is not required to be detained in any other case.

(SMT.R.S.DALVI, J.) **(DR.S.RADHAKRISHNAN,J.)**